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ABSTRACT

This conference presentation deals with legal and cultural concerns of having foreign students serve as interns at U.S. colleges and universities. The first issue discussed is whether the intern is to be paid, which requires compliance with many federal laws and regulations. Form I-9, the Employment Eligibility Verification Form, must be completed. Students enrolled in a college, university, conservatory, or seminary whose training program is "an integral part of an established curriculum" may apply to the Designated School Official for curricular practical training authorization, which is defined as an alternate work/study, internship, cooperative education, or other type of required internship or practicum offered by sponsoring employers through cooperative agreements with the school. Designated School Officials are advised to document rigorously the rationales for training authorizations required for a particular course or curricular track. Other regulations apply to Optional Practical Training situations. Five major cultural problem areas are then identified: working for no money, working for or with women, the faster pace of U.S. culture, foreign students who have not been recent students, and foreign interns who are older than nonforeign intern colleagues. The college's intern coordinator must be sensitive to these cultural differences, place foreign students in locations that are understanding of cultural differences, and brief foreign interns as to what is expected of them. (JDD)

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"The Foreign Student Intern: Legal and Cultural Aspects"

A paper presented at the 1993 Speech Communications Association Convention

Miami, Florida

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Colleges and universities like to discuss the success of their internship programs. What you don't hear are the many problems that occur as programs develop and expand. The area that I wish to discuss today deals with the foreign student as an intern.

There are two areas of concern: Legal and Cultural.

The legal problems are the easiest to overcome, so I will discuss them first.

The first problematic issue is whether the intern is to be paid, such as in a co-operative education situation. Generally, small per diem stipends for travel or lunches would not be considered as "wages."

However, if an employer retains a person to perform labor or services in return for wages or other pay, the employer and the intern must complete Form I-9, the Employment Eligibility Verification Form.

If the intern is ineligible and the placement site knowingly continues to hire or employ unauthorized employees and is caught by the authorities the penalties range as follows:

First Violation - $250 - $2,000 for each employee
Second Violation - $2,000 - $5,000 for each employee
Subsequent Violations -$3,000 - $10,000 for each employee

More information on this subject can be found in the Immigration and Naturalization Service's (INS) Source Handbook for Employers - Immigration Reform and Control Act of 1986 and can be obtained from the

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
202-783-3238

When may a foreign student accept employment? An understanding of the government's definition of employment is order. The U.S. Government defines employment as the rendering of services on either a part-time of full-time basis for compensation, financial or otherwise, including self-employment.

Dramatic changes in F-1 student employment options were produced by (1) the Immigration Act of 1990, (2) the October 1991 revision of the F-1 regulations, and (3) a subsequent July 1992 interim final rule reinstating work options eliminated in the October 1991 rule.

Currently, an F-1 student may accept employment or engage in business only under certain conditions and, in the case of optional practical training and employment based on severe hardship, only after securing INS approval.

Permission to accept any employment, regardless of whether that employment is part of an academic program, is automatically suspended if the secretary of labor certifies to INS that a strike or labor dispute is in progress at the student's place of employment.

The most important and relevant language in the law is found in Section 4.9.3.1 entitled Curricular Practical Training.

Students enrolled in a college, university, conservatory, or seminary whose training program is "an integral part of an established curriculum" may apply to the Designated School Official (DSO) for curricular practical training authorization. Such training is is defined as

"alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." 8 CFR 214.2(f)(10)(i)

However, there is a problem with the preface and the actual regulations. University DSO's are advised to combine the two.

The preface to the October 1991 regulations speaks of "both required and optional curricular training". The regulations themselves speak only of "required" curricular practical training. The Immigration and Naturalization Service's intention was to provide for practica that are required of all students. The Designated School Official would need to establish that the practicum represents satisfaction of the requirements for the particular course or track, but not that the particular course of track is an invariable part of a program of study.

A course offered for the primary purpose of facilitating employment authorization does not qualify for curricular practical training.

Any such curricular practical training must be sponsored ie: with guidance, monitoring from schools.

Curricular practical training by definition may be... cooperative education ... which is offered by sponsored employers through cooperative agreements with the school. Curricular practical training offered through institutionally sponsored cooperative education... is usually optional and not for credit (INS cable, 24 May 1992, p.1)

Designated School Official's are therefore well advised to document rigorously the rationales for training authorizations required for a particular course or curricular track. At minimum, qualifying curricular practical training courses will carry academic credit, be listed in the school's regular bulletin of course offerings, and a faculty member assigned to teach the course.

Students are not limited to the amount of curricular practical training they may utilize. Students who have engaged in one year or more of full-time curricular practical training, however, are ineligible for optional practical training.

The procedure to apply for curricular practical training is fairly straightforward:

The student must submit to a Designated School Official at the authorized school of attendance:

(1) a completed request for curricular practical training on Form I-538
(2) Form I-201D

An F-1 Student may apply to INS for Optional Practical Training directly related to his or her major area of study after being enrolled for 9 consecutive months. (Source:Section 4.9.3.2 Optional Practical Training)

There are four categories of Optional Practical Training

1. during annual vacation or when school is not in session
2. while school is in session
3. after completion of all course requirements for the degree
4. after completion of the course of study

OPT may be granted for a maximum of twelve months provided the student:

1. submits Form I-538 to the university's Designated School Official
2. submit Form I-20D to the university's Designated School Official

However this discussion may be made moot, pending any the results of the North American Free Trade Agreement (NAFTA) vote in Congress. My Washington sources have revealed that the Clinton administration will propose to eliminate all foreign student employment if NAFTA is defeated. The administration's argument is the such employment displaces American workers and employment of foreign students based on economic need or cooperative programs leads to permanent residency. [Optional Practical Training is the first step in the process. The H-1 work permit is next, followed by a labor certificate, followed by a "green card" (permanent residency), and finally citizenship.]

On the other hand, in order to sell NAFTA, the administration is willing to take away the hiring of foreigners. Proposed restrictions will

include not being able to hire a foreigner unless the company can prove that they (the company) has not laid off an American worker ninety (90) days before or will not dismiss an American worker ninety (90) days after the foreigner is hired.

It appears that the administration is willing to offer up the foreign student population as a sacrificial lamb in either case.

As previously mentioned, government rules and regulations are tangible obstacles, that, although time consuming, are surmountable. However, cultural problems may be more difficult to surmount.

The allotted time for this paper prohibits an in depth discussion of the issue, therefore I wish to identify five (5) major problem areas.

1. Working for no money

Some foreign students are not used to the concept of an "unpaid work experience" and may balk at working for no pay and as a result may not give a 100% effort.

2. Working for or with women

Some foreign students, especially from Third World countries, may never have worked for a female supervisor and taking orders or instructions from a female may cause problems.

3. Pace is faster

Some foreign students are used to a more leisurely pace since their television system may not adhere to the same precise time standards used in the United States.

4. Not "student oriented"

Some foreign students haven't been students for while, especially if they are engaged in an exchange program. There is a potential for problems when they have to conform to our educational system.

5. Age

Some foreign students may be older than other interns at the site or even older than the people supervising them. In cultures that respect age, this could be problem.

The intern coordinator must be sensitive to these cultural differences and only place foreign students in locations that are sympathetic or understanding of cultural differences.

Additionally, the college intern director must carefully brief foreign interns as to what is expected of them at the site in order to insure a successful placement.